

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re K. S., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

K. S.,

Defendant and Appellant.

C063042

(Super. Ct. No. 62572)

The minor, K. S., appeals from a probation condition imposed following his adjudication for receiving a stolen vehicle. He contends the trial court abused its discretion by imposing a gang probation condition where, as here, there is nothing in his history which suggests he has ever been involved in gang-related conduct or that this offense was in any way gang related. We find the court failed to exercise its discretion in imposing the probation condition and remand the matter for further proceedings consistent with this opinion.

STATEMENT OF FACTS

Between the early morning of July 4, 2009, and the afternoon of July 5, 2009, Michelle Wong's black Honda Civic was stolen from her home in Daly City. On the afternoon of July 5, 2009, the minor called his friend John Davisson and claimed he had a way for them to make some money, get his car out of impound, and pay off Davisson's car. Davisson said, "Okay," and he and his girlfriend, S. P., went to get the minor.

Later that evening, the minor and Davisson were working on a black car in the garage of Davisson's mother's home. The minor said the car belonged to his uncle and they were doing some repairs.

Davisson's mother, Joanne Singh, went out to a movie with her daughter, her niece, and S. P. When they returned home, at about 1:30 in the morning, a car that was "taken apart" was parked about two blocks away from her home. S. P. saw the car and noticed it had no wheels on it. A car engine was in the garage, sitting in a pool of oil or transmission fluid. Singh's daughter's car was parked in the garage, and it had different wheels on it than when she had last seen it.

In the early morning of July 6, 2009, Lodi Police Officer Eric Versteeg noticed a "stripped" black Honda parked on the street. He checked the license plate number and discovered the car had been stolen. He then followed a fluid trail from the car to the driveway of Singh's home. Officers obtained a search warrant and during its execution found most of the car parts missing from the stolen Honda were in the garage.

The minor, his aunt, and girlfriend all testified that except for a brief trip to the store, the minor remained at his home from July 4, 2009, through the morning of July 6, 2009. The minor denied being at Singh's home the night of July 5, 2009, denied calling Davisson on July 4 or 5, and denied taking Wong's car.

PROCEDURAL HISTORY

The district attorney's office filed a Welfare and Institutions Code¹ section 602 petition alleging that the minor had unlawfully driven or taken a vehicle, received a stolen vehicle, owned or operated a chop shop, and conspired to own or operate a chop shop. The petition further notified the minor of the intention to calculate the maximum term of confinement by aggregating the terms of four previously sustained petitions. In a separate petition, it was alleged the minor had violated previously imposed conditions of probation by failing to stay away from Davisson and failing to obey all laws.

Following a contested jurisdictional hearing, the court sustained the petition as to the minor receiving a stolen vehicle and found the other counts were not proven. The court also found the minor had violated his probation.

At the dispositional hearing, the court declared the receiving stolen property offense was a felony, found the minor a ward of the court, and continued him on probation. Among the

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

conditions of probation imposed was the condition that the minor not associate with "anyone known to the minor to be a member of a criminal street gang." Counsel noted there was nothing in the record indicating a gang relationship. The court found that condition had been previously imposed as part of the October 2008 disposition and was already in force. Based on that finding, the court overruled counsel's objection and imposed the condition.

DISCUSSION

I

The October 2008 Gang Condition

The minor contends the trial court abused its discretion in relying on the October 7, 2008, imposition of a gang probation condition to impose the same gang probation condition in this case. The minor argues that the reference to the gang condition noted in the October 7, 2008, order was a "scrivener's error" and not reflective of those proceedings. The minor also contends it was error to impose the gang condition in this case, because there is no evidence in the record that the minor has a history of gang involvement or any "genuine" concern he was associating with gang members.

We disagree with the minor's contention that the record does not reflect the court imposed the gang condition on October 7, 2008. At that hearing, the court stated, "The minor is continued a ward of the juvenile court under the usual rules of probation." The minor acknowledges similar language was upheld in *In re Frankie J.* (1998) 198 Cal.App.3d 1149, but seeks

to distinguish this case on the basis that in *In re Frankie J.*, the probation department always used the same pre-printed form, entitled "Terms and Conditions of Probation," in every case. Thus, in that case the phrase would have a known and understood meaning. The minor contends the absence of such a form in this case renders the phrase "usual rules of probation" too vague to inform the minor of the conditions imposed.

Here, as in *Frankie J.*, the minor was represented by counsel at the October 7, 2008 hearing. When a minor is represented by counsel at the time and "the court uses a short-cut phrase, such as 'usual terms and conditions,' 'violate no law,' and 'obey all laws,' it is incumbent upon the minor/defendant or his counsel to object and to request clarification. [Citation.]" (*In re Frankie J.*, *supra*, 198 Cal.App.3d at p. 1154.) Moreover, in the context of this case, the gang condition had been imposed as a probation condition in each of the minor's previous dispositions. Thus, in the context of this minor, the gang condition was one of the "usual terms" of probation. Thus, we find the gang condition was imposed at the October 7, 2008 hearing, without objection, and was properly recorded in the minutes of that hearing.

II

The Gang Condition In This Case

Resolving the 2008 issue does not, however, resolve the issue of the propriety of the imposition of the gang condition in this case. The record here indicates that the court's reason for imposing the gang condition was the fact the condition had

been imposed as part of the October 7, 2008 disposition. There is no indication the court independently exercised its discretion in considering whether the condition remained appropriate and necessary in the case currently before the court.

"Probation is governed by statute." (*People v. Balestra* (1999) 76 Cal.App.4th 57, 64; see § 730; cf. Pen. Code, § 1203.1.) Under the governing statute, a juvenile court granting probation "may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (§ 730, subd. (b).) The statute both "furnishes and limits" the court's authority to impose probation conditions. (*People v. Cervantes* (1984) 154 Cal.App.3d 353, 356.)

In fashioning probation conditions, the "courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1. [Citations.]" (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120-1121; see also *People v. Welch* (1993) 5 Cal.4th 228, 233.) "The juvenile court . . . may impose "any reasonable condition that is 'fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.'"" [Citations.]" (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.) The juvenile court "may even impose a condition of probation that would be unconstitutional or otherwise improper so long as

it is tailored to specifically meet the needs of the juvenile.
[Citation.]” (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5.)

In determining how best to rehabilitate a minor, the juvenile court should consider the broadest range of information. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329.) “In planning the conditions of a juvenile probationer’s supervision, the juvenile court must consider both the circumstances of the crime and the juvenile’s entire social history.” (*In re Christopher M.* (2005) 127 Cal.App.4th 684, 693; see also *In re Tyrell J.* (1994) 8 Cal.4th 68, 81, overruled on other grounds by *In re Jaime P.* (2006) 40 Cal.4th 128, 139.)

“A condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality” (*People v. Lent* (1975) 15 Cal.3d 481, 486.) “This test is conjunctive--all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality. [Citation.]” (*People v. Olguin* (2008) 45 Cal.4th 375, 379-380.)

On appeal, we review probation conditions for abuse of discretion. (*People v. Carbajal, supra*, 10 Cal.4th at p. 1121; see *In re Abdirahman S.* (1997) 58 Cal.App.4th 963, 969.) “A

failure to exercise discretion also may constitute an abuse of discretion." (*People v. Sandoval* (2007) 41 Cal.4th 825, 847-848.)

It does not appear that in this case, the court exercised its discretion. An exercise of discretion requires the court to consider, among other things, "both the circumstances of the crime and the juvenile's entire social history" in forming the probation conditions. Relying solely on the imposition of a probation condition for a different offense committed almost a year before does not meet that obligation. Accordingly, we shall remand the matter.

DISPOSITION

The judgment (order of probation) is reversed and remanded to the trial court with instructions to exercise its discretion on whether to impose the gang-related condition in the instant case, giving appropriate consideration to the entirety of the record in this case, including the minor's social history and crime.

ROBIE, J.

We concur:

HULL, Acting P. J.

BUTZ, J.